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IN THE

Supreme Court of the United States

October Term, 1954

No. [redacted] 97

ALBERT J. DEMELLE, doing business as CURLEY'S TRANSPORTATION COMPANY, *Petitioner*

v.

INTERSTATE COMMERCE COMMISSION, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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v.

INTERSTATE COMMERCE COMMISSION, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Albert J. Demelle, doing business as Curley's Transportation prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled case on February 23, 1955. (R. 45)

OPINIONS BELOW

The opinion of the District Court (R. 26-30) is reported in 124 Fed. Supp. 514 (D.C.-Me.). The opinion of the United States Court of Appeals (R. 39-45)[1] is reported in 219 Fed. 2nd 619.

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[1] Record references to certified record from Court of Appeals and up to May 9, 1955.

JURISDICTION

The judgment of the United States Court of Appeals was entered February 23, 1955. (R. 45) The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

(1) Is the Certificate issued to petitioner under the so-called "grandfather" clause of Section 206(a), Part II, Interstate Commerce Act, subject to a collateral attack in a proceeding under Section 222(b) of the same Act?

(2) Whether the judicial opinion, without investigation and order by the Interstate Commerce Commission, places power in the Commission to revoke in part any certificate in which its language calls for interpretation?

(3) Whether judicial limitations upon the use of a certificate and without investigation by the Commission of its own order does not deprive the holder of the certificate of property without due process of law?

(4) Does the decision of the Court of Appeals interpreting a "grandfather" certificate issued October 1938, with reference to authority purchased in August 1946, and issued in a Certificate dated June 13, 1949, pave the way for revocations of "grandfather" rights based upon subsequent purchases or extensions of operating authorities?

STATUTES INVOLVED

The pertinent statutory provisions are printed in Appendix A, *infra*, 1a-4a.

STATEMENT

A complaint was filed as provided by Section 222(b), Part II, Interstate Commerce Act, in the District Court of the United States for the District of Maine, Southern Division, by the Interstate Commerce Commission against Albert J. Demelle, doing business as Curley's Transpor-

tation Company, on May 25, 1954 (R. 1, 3-10). The complaint alleged violations of a certificate first issued to petitioner October 17, 1938, reissued June 4, 1941, and June 13, 1949 (R. 6, 20-26). The violations in question constituting common motor carrier operations to and from points in the State of Maine, lying "on and east of U.S. Highway 1" (R. 8-10, Ex. A). Petitioner answered that the complained of operations were conducted within the scope of his certificated authority (R. 11, 13-16). Thereafter complainant filed a Motion for Summary Judgment and argument was held on said motion (R. 17). The only evidence received were the three Certificates issued by the Commission to petitioner. After oral argument the district court interpreted the certificate as requested by the Commission, found petitioner to be operating without authority, and ordered petitioner enjoined from such further operations.

October 6, 1954, appeal was taken to the court below and on October 29, 1954, the injunction was stayed (R. 30-32). The court below affirmed the judgment of the district court and on March 28, 1955, the injunction again became effective.

REASONS FOR GRANTING THE WRIT

1. The Certificate or operating authority in question reads as follows:

> "IRREGULAR ROUTES:
>
> General commodities, with exceptions as specified on sheet No. 1,
>
> Between points and places within 20 miles of Boston, Mass., Providence, R. I., and Sanford, Maine, except points and places in New Hampshire, and Lebanon, Berwick and South Berwick, Maine, and points and places in Maine on and east of U.S. Highway 1,"

It was first issued to petitioner October 17, 1938. The authority was issued pursuant to the so-called "grandfather" provisions of Section 206(a), Part II, Interstate Commerce Act[2] (R. 11, 13, 18). Subsequently, additional authority was purchased, including the right to operate a "Regular Route" over U. S. Highway 1 running through the 20-mile radius of Sanford, Me. Proceeding under § 222(b) of the Act the Commission has attacked this certificate by its contentions that the "Irregular Route" authority is delimited by the subsequently acquired "Regular Route" authority. That such contention influenced the court below is plain from the opinion (R. 43). Section 208(a) of the Act provides that certificates must specify the territory to be served (R. 8). Section 212(a) of the Act provides that this "Irregular Route" authority may not be revoked except for causes not evident in this proceeding. If the thousands of "grandfather" certificates issued to motor carriers are to be subject to such an attack and whittled down because of subsequent purchases of unrelated operating rights, the Act then affords no protection to the valuable property rights a carrier has in his certificate.

2. The Commission conducted no investigation of the scope or intent of this Certificate. There is no formal action of record to indicate that the Certificate has ever been the subject of perusal by the Commission. Section 212(a) would preclude a rewriting of the certificate as suggested by the District Court (R. 29). The decision of the court below affirms in the Commission the power to obtain a revocation through the medium of Section 322(b).

3. A certificate authorizing interstate motor carrier operations is a unique property right. Compare *Marion Trucking Company, Inc.*, v. *Harwood Trucking, Inc.*, et al., 116 N.E. (2d) 636 (Ind. App.). Petitioner is entitled to protection of this right as provided in the 5th Amendment of the Constitution. The Action of the District Court, af-

[2] Hereinafter referred to as the Act.

firmed by the court below, will deprive petitioner of that right without due process. That is without an investigation by the Commission and a formal interpretation of its own order. Had the Commission investigated this Certificate it could never have put in a report the language used by the court below (R. 43) which so clearly points to a misunderstanding of petitioner's "grandfather" rights as compared with its purchased authority. (See note #R. 26). Thus petitioner is proceeded against, not by a formal investigation of his certificate, but in a suit under Section 322(b) which was designed to enjoin operations found to be illegal. This procedure robs petitioner of his rights in his certific[illegible] without the due process which would dictate an investigation by the body empowered by Congress to issue the certificate. Compare *Transportation Activities of Tornetta*, 48 M.C.C. 637.

4. In *Transportation Activities of Brady Transfer & Storage*, 47 M.C.C. 23, affirmed 80 F. Supp. 110 (D.C.-Ia.), affirmed per curiam *Brady Transfer & Storage Company* v. *U. S.*, 335 U.S. 875, 69 S. Ct. 239, the Commission plainly set forth the distinctions between regular and irregular route operating rights. Petitioner was granted irregular route authority and later purchased regular route authority. The decision of the court below casts doubt upon his "grandfather" rights because he purchased additional authority some eight years after such rights were granted. Motor carriers cannot purchase or extend their rights with any security if such moves are to be held to jeopardize or cancel their existing rights.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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APPENDIX

APPENDIX

APPENDIX A

Statutory Provisions

Part II, Interstate Commerce Act:

§ 204 (49 U.S.C., § 304)

"(a) It shall be the duty of the Commission—

(6) To administer, execute, and enforce all provisions of this part, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration; and"

§ 206 (49 U.S.C., § 306)

(a) (1) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: PROVIDED, HOWEVER, That, subject, to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the

fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207(a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: AND PROVIDED FURTHER, That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commission a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

§ 208 (49 U.S.C., § 308)

(a) Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privileges granted by the certificate such reasonable terms, conditions, and limitations as the public convenience and necessity may from time to time require, including terms, conditions, and limitations as to the extension of the route or routes of the carrier, and such terms and conditions as are necessary to carry out, with respect to the operations of the carrier, the requirements established by the Commission under section 204 (a) (1) and (6): PROVIDED, HOWEVER, That no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory

specified in the certificate, as the development of the business and the demands of the public shall require.

§ 212 (U.S.C., § 212)

(a) Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit, or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of this part, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit or license: PROVIDED, HOWEVER, That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in section 204 (c), commanding obedience to the provision of this part, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit, or license, found by the Commission to have been violated by such holder: AND PROVIDED FURTHER, That the right to engage in transportation in interstate or foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the provisions of section 206, 209, or 211, or by virtue of the second proviso of section 206 (a) or temporary authority under section 210a, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of section 211 (c), 217 (a), or 218 (a) or with any lawful order, rule, or regulation of the Commission promulgated thereunder.

§ 222 (49 U.S.C., § 322)

"(b) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto."

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 4907

ALBERT J. DEMELLE, d.b.a.
CURLEY'S TRANSPORTATION COMPANY, *Defendant, Appellant,*

v.

INTERSTATE COMMERCE COMMISSION,
Plaintiff, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[124 F. Supp. 514]

Before MAGRUDER, *Chief Judge,* and WOODBURY and HARTIGAN, *Circuit Judges.*

Harry C. Ames, Jr., with whom *Wilfred A. Hay* was on brief, for appellant.

Herman F. Mueller, Attorney, with whom *Peter Mills,* United States Attorney, and *A. J. Merrill,* Attorney, were on brief, for appellee.

Opinion of the Court

February 23, 1955.

HARTIGAN, *Circuit Judge.* This is an appeal by the defendant, Albert J. Demelle, from a judgment of the United States District Court for the District of Maine entered

September 22, 1954, under 49 U.S.C. § 322(b), enjoining the defendant from carrying on interstate motor carrier operations to points in Maine other than those covered by a certificate of public convenience and necessity issued to the defendant by the Interstate Commerce Commission on June 13, 1949.

The certificate in question, insofar as the irregular route authority with which we are solely concerned, reads:

"IRREGULAR ROUTES:

General commodities, with exceptions as specified on sheet No. 1,

Between points and places within 20 miles of Boston, Mass., Providence, R.I., and Sanford, Maine, except points and places in New Hampshire, and Lebanon, Berwick, and South Berwick, Maine, and points and places in Maine on and east of U.S. Highway 1."

The defendant also had been granted in this certificate of June 13, 1949 regular routes between Sanford, Maine, and Providence, R.I., between Smithtown, N.H., and South Barre, Mass., between Boston, Mass., and Waterville, Maine; and between Providence, R.I. and Boston, Mass., but we are not concerned with these regular routes in this case. The defendant admitted in his answer that he had transported goods to certain points in Maine on and east of U.S. Highway 1 which the Interstate Commerce Commission in its complaint alleged were not within the authority of any certificate of public convenience and necessity issued by it. The sole issue before the district court was ". . . the interpretation of the clause, '. . . and points in Maine on and east of United States Highway No. 1', as contained in the provision with respect to the irregular route authority."

The Commission, following the filing of the defendant's answer, moved for summary judgment. Fed. R. Civ. P. 56. The defendant moved to strike certain exhibits attached to

the Commission's motion for summary judgment and this motion was granted. It was stipulated by the parties that there was no genuine issue as to any material fact and that the sole issue before the court was the interpretation of the defendant's irregular route authority. The Commission contended in substance that under this irregular route authority the defendant could only carry goods between points and places within 20 miles of: (1) Boston, Mass., (2) Providence, R.I., and (3) Sanford, Maine, except points and places in New Hampshire, and Lebanon, Berwick, and South Berwick, Maine, and points and places in Maine on and east of U.S. Highway 1. The defendant contended that the certificate allows it to carry goods between: (1) points and places within 20 miles of Boston, (2) points and places within 20 miles of Providence, (3) points and places within 20 miles of Sanford, except points and places in New Hampshire, and Lebanon, Berwick, and South Berwick, Maine, and (4) points and places in Maine on and east of U.S. Highway 1.

The district court in its opinion stated that:

> "After a careful consideration of the entire provision relating to the irregular route authority, this Court is of the opinion that the aforementioned clause of the Irregular Route Authority is not a grant of additional authority, as contended by the defendant, but an exception to the grant contained in that provision as contended by the Plaintiff. This Court interprets the Irregular Route provision as authorizing service to points in Maine located in the territory within a radius of 20 miles of Sanford, except Lebanon, Berwick, and South Berwick, *and also except* points in Maine located on and east of U.S. Highway 1, within a radius of 20 miles of Sanford, Maine."

The defendant now contends that the finding by the district court was erroneous and that a true construction of

the certificate in question would permit the defendant to operate as a common carrier to all points and places in Maine on and east of U.S. Highway 1.

Rule 56(c) of the Federal Rules of Civil Procedure states in part that summary judgment ". . . shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

The defendant did not base his defense on the ground that the certificate was a mistake and incorrectly represented the intention of the Commission, but rather on the ground that the provision in the certificate relating to irregular routes was not ambiguous. The defendant consequently did not assert in the lower court that there was any issue of fact involved and "Since no questions of fact were raised in the district court they may not be presented nor considered here." *Shafer* v. *Reo Motors,* 205 F. 2d 685, 688 (3 Cir. 1953). Moreover, both the plaintiff and defendant stipulated that there was no genuine issue of fact. The defendant did not attempt to indicate that there existed an issue of fact by introducing exhibits or affidavits following the Commission's motion for summary judgment and, therefore, he cannot now claim that he was deprived of a trial on any material issue of fact. See *United States* v. *W. T. Grant Co.,* 345 U.S. 629, 635 (1953); *Helvering* v. *Rubinstein,* 124 F. 2d 969 (8 Cir. 1942).

The defendant apparently believed that his interpretation of the certificate would be accepted by the district court and relied solely upon the words of the certificate. Thus, when the district court granted summary judgment, there were no factual issues to be decided, and there was no indication that any evidence would be offered in an attempt to prove what the intention of the Commission had been when this certificate was granted—there was only the language of the certificate itself.

We believe that the Commission should have couched the irregular route authority in such explicit language as to avoid any possible question as to its meaning but, in our opinion, the construction which the district court has placed upon the language of the certificate is a more tenable one than that advocated by the defendant. The defendant's contention would be more plausible if U. S. Highway 1 did not pass within 20 miles of Sanford, Maine, but, as the Commission points out, some 30 miles of U. S. Highway 1 is within 20 miles of Sanford, Maine. It is clear that Lebanon, Berwick, and South Berwick, Maine, which are within 20 miles of Sanford, Maine, are exceptions to the defendant's grant. It would have been illogical and redundant for the Commission to grant the defendant an irregular route authority to all points within 20 miles of Sanford and then also specifically to grant the defendant irregular route authority to points such as Lebanon, Berwick, and South Berwick, which are within that 20 mile area. The certificate, however, does not repeat the word "except" before "Lebanon, Berwick, and South Berwick, Maine" yet these places are conceded to be exceptions to the defendant's irregular route authority. Therefore, we are not convinced by the defendant's argument that the omission of the word "except" before "points and places in Maine on and east of U.S. Highway 1" necessitates holding that such "points and places" are within the defendant's grant of authority rather than being exceptions thereto. We think it more reasonable to assume that "except" was intended not only to relate to "Lebanon, Berwick, and South Berwick, Maine" but also to "points and places in Maine on and east of U.S. Highway 1."

We, therefore, agree with the district court that the phrase, "points and places in Maine on and east of U.S. Highway 1", is not a grant of an additional irregular route authority but, like "points and places in New Hampshire, and Lebanon, Berwick, and South Berwick, Maine", is an exception to the irregular route authority.

The judgment of the district court is affirmed.

WOODBURY, *Circuit Judge*, (concurring). I concur in the result for I believe that it is more probable than not that the certificate means what Judge Clifford and this Court think that it means. However, I do not wish to go on record as subscribing to the proposition that the failure of the parties to raise a question of fact below, or their stipulation that no issue of fact existed, necessarily requires that this case be disposed of on the motion for summary judgment filed by the Commission under Rule 56(c). That is to say, I think that in spite of the conduct of the parties or their stipulation, the district court might have refused to grant the Commission's motion for summary judgment if in its opinion the resolution of an issue of fact was necessary for decision. Thus in this case, if I felt that the certificate standing alone was so ambiguous as to be wholly unintelligible, I would say that, since the rights claimed are "grandfather" rights, the district court in spite of the parties' concessions, tacit or otherwise, that no issues of fact existed, might have required the production of evidence as to the scope of the carrier's activities prior to the critical date to show what must have been the scope of the authority granted by the certificate. And I would say that if we were in grave doubt as to the meaning of the certificate we could remand to the district court for the purpose of receiving such evidence.

APPENDIX C

PROCEEDINGS IN COURT OF APPEALS

On the same day, February 23, 1955, the following judgment was entered:

Judgment

February 23, 1955

This cause came on to be heard on the record on appeal from the United States District Court for the District of Maine, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:

/s/ ROGER A. STINCHFIELD
Clerk

Thereafter, on March 11, 1955, mandate issued to the District Court.

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 97

ALBERT J. DEMELLE, DOING BUSINESS AS CURLEY'S TRANSPORTATION COMPANY, PETITIONER

v.

INTERSTATE COMMERCE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 26-30) is reported in 124 F. Supp. 514. The opinion of the court of appeals (R. 39-44, Pet. App. 5a-10a) is reported in 219 F. 2d 619.

JURISDICTION

The judgment of the court of appeals (R. 45, Pet. App. 11a) was entered on February 23, 1955. The petition for a writ of certiorari was filed on May 24,

1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether petitioner's certificate of public convenience and necessity authorizes it to serve certain points in the State of Maine.

STATUTE INVOLVED

The pertinent provisions of Part II of the Interstate Commerce Act, 49 Stat. 543, 49 U.S.C. 301 *et seq.*, are as follows:

> Sec. 203(a) (14): The term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, * * *
>
> Sec. 206(a): Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations * * *.
>
> Sec. 222(b): If any motor carrier or broker operates in violation of any provision of this

part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

STATEMENT

Petitioner holds a motor carrier's "grandfather" certificate of public convenience and necessity which, insofar as here pertinent, authorizes it to carry general commodities over irregular routes "[b]etween points and places within 20 miles of Boston, Mass., Providence, R. I., and Sanford, Maine, except points and places in New Hampshire, and Lebanon, Berwick, and South Berwick, Maine, and points and places in Maine on and east of U.S. Highway 1" (Pet. App. 6a).

On May 25, 1954, the Interstate Commerce Com-

mission filed a complaint (R. 3-10) in the United States District Court for the District of Maine under Section 222(b) of the Interstate Commerce Act, seeking to enjoin petitioner from serving points not authorized by its certificate, namely, points in Maine on and east of U.S. Highway 1. Petitioner's answer (R. 11-13) admitted that it had served the points, but contended that its certificate authorized the service. The Commission moved for summary judgment (R. 17)[1] and the district court granted the motion and issued an injunction (R. 26-30). The court held (R. 28) that the phrase "points and places in Maine on and east of U. S. Highway 1" was not a grant of additional authority, as petitioner contended, but was, like "Lebanon, Berwick and South Berwick," an exception to the authority to serve points within 20 miles of Sanford.

On appeal, the Court of Appeals for the First Circuit unanimously affirmed (Pet. App. 5a-10a), holding (Pet. App. 9a) that the word "except" was intended to relate not only to "Lebanon, Berwick, and South Berwick, Maine," but also to points on and east of Route 1.

ARGUMENT

Contrary to petitioner's contention (Pet. 4-5; see Questions Presented, Pet. 2), this case presents no constitutional or statutory issues relating to revocation of certificates, but only the narrow question whether petitioner's certificate authorizes

[1] The parties stipulated that there was no issue as to any material fact (Pet. App. 7a).

it to serve points in Maine located on and east of U. S. Highway 1. We submit that the negative answer given to this question by the two lower courts is clearly correct, and that there is no reason for further review by this Court.

1. The court of appeals correctly held (Pet. App. 9a) that the phrase "points and places in Maine on and east of U.S. Highway 1" is not a grant of additional authority but, like "points and places in New Hampshire" and "Lebanon, Berwick, and South Berwick, Maine" is an "exception to the irregular route authority." Petitioner concedes (*ibid.*) that, although the word "except" does not occur before "Lebanon, Berwick, and South Berwick," the exception covers those points. There is no basis for petitioner's contention that the word "except" applies to the first two groups of points, but not to "points and places in Maine east of U. S. Highway 1." We submit that the court of appeals correctly concluded that the latter points are a further exception to petitioner's operating authority.

2. There is no merit to petitioner's contention (Pet. 2, 4-5) that the court, by construing the certificate as not authorizing service to points on and east of Route 1, has revoked petitioner's "grandfather" authority.[2] For this argument assumes that the certificate authorizes such service, whereas

[2] The argument that the court below interpreted the grant of the "Regular Route" as limiting the authority granted for the "Irregular Route" (Pet. 4) finds no apparent support in the opinion of the court. In fact the court specifically stated Pet. App. 6a): "* * * but we are not concerned with these regular routes in this case."

the fact is, as the court below held, that it does not. If petitioner had wished to offer evidence in the district court as to the scope of its grandfather operations, it could have done so instead of stipulating that there were no issues as to any material facts. The determination of the scope of existing authority obviously does not constitute a "rewriting" or a "revocation" (Pet. 4) of the certificate.

3. Petitioner's argument (Pet. 4-5) that the Commission cannot institute judicial proceedings to enjoin unauthorized operations unless it has first conducted a formal administrative investigation is equally untenable. Section 222(b) of the Interstate Commerce Act, under which this action was brought, contains no such requirement. On the contrary, it authorizes the Commission to apply to a United States district court for injunctive relief "[i]f any motor carrier * * * operates in violation of any provision of this part * * * or of any term or condition of any certificate * * *."

CONCLUSION

The decision below is correct, no important question of federal law is presented, and there is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Solicitor General.

STANLEY N. BARNES,
Assistant Attorney General.

DANIEL M. FRIEDMAN,
Special Assistant to the Attorney General.

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Interstate Commerce Commission.

JUNE, 1955

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